

CHAPTER I STATE CONTROLLER POLICIES

SECTION 1 **TASK ORDER - FUNDING LETTER POLICY**

Policy for Processing Contract Modification Documents, Task Order Assignments and Funding Letters Included In Original Contract Provisions

State contracts may be modified by processing an amendment to the contract, a change order, or in the case of a professional services contract a supplement. Some state contracts contain provisions that allow an agency to order additional goods and/or services by using a “task order” or “funding letter”. For purposes of this policy, a “change order” means a bilateral change order agreed to by the parties and issued consistent with State Buildings or state controller policy.

Contract amendments must be reviewed by the Attorney General’s Office and approved by the state controller or his designee. Change orders and supplements, which are additions to the existing contract, are not reviewed by the Attorney General’s Office but must be approved by the state controller or his designee. Task orders or funding letters, which are incorporated in the contract, are not reviewed by the Attorney General’s Office after the contract has been approved, however, they must be approved by the state controller or his designee.

Without a copy of the original contract and all previous amendments, the Attorney General’s Office cannot perform a legal sufficiency review for a new amendment. Further, it is difficult for the State Controller’s Office to determine the correct performance period and the dollar amount to be encumbered. Similarly, it is very difficult for the State Controller’s Office to insure that the task order or funding letter is being used according to the terms of the contract unless a copy of the contract is attached to the task order or funding letter. However, we understand that it is time consuming and costly for an agency to copy the contract for every task order and funding letter forwarded to the State Controller’s Office for approval. Therefore, the following policy shall apply:

- ♦ All amendments to contracts are to be forwarded for review and approval with a copy of the original contract and all previously approved amendments attached.
- ♦ Capital construction change orders, and supplements to professional contracts do not require copies of the original contract or other modifications to be attached for processing and approval.
- ♦ All non-capital construction change orders, task orders or funding letters must be forwarded with a copy of the original contract attached or a letter from the program manager that identifies the original contract by agency and routing number and includes a statement that the change order, task order or funding letter is being used in accordance with the contract.

SECTION 2
SPECIAL PROVISIONS POLICY

State Fiscal Rule 3-1 requires all state contracts to contain Special Provisions as set forth in Appendix A of that rule. As you recall, state agencies may purchase these forms from Juniper Valley. Several state agencies have inquired whether the language of the Special Provisions can be keyed into a word processor for subsequent incorporation into state contracts. Yes, this may be accomplished however, you must be extremely careful to insure that the exact language is correctly keyed, including comma's, periods, etc. No changes of any kind are authorized. For ease of review, the format of the Special Provisions must be as similar as possible to Appendix A. Also, the Special Provisions must continue to be the final pages of the contract.

In addition, if an agency is delegated to sign a contract on behalf of the state controller, the agency may change the signature block portion of the Special Provisions to coincide with the requirements of their delegation letter. Please refer to your delegation letter and the signature block you are required to use when signing on behalf of the state controller. Also, if a state agency has contracts where the legal review by the attorney general has been waived by the state controller, the state agency may remove the attorney general signature block and insert a signature block for the state agency pre-approved form contract reviewer.

SECTION 3
ADVANCE PAYMENT POLICY

1. It is the policy of the state controller that the state shall not make advance payments. Vendors of the state are expected to have adequate resources or working capital in order to provide goods and/or services to the state. An advance payment requires issuing a state warrant and accounting for the advance payment which incurs additional costs for the state. Further, an advance payment results in a loss of interest earnings for the state and the risk of loss of the funds advanced because of vendor bankruptcy. Should an advance payment be made, it potentially places the state in a difficult negotiating position with the vendor if the goods and/or services received are not adequate. This is because the state is unable to withhold payment pending resolution of the matter.
2. Notwithstanding this policy, it is accepted practice in some commercial transactions to make advance payments. In the limited instances set forth below, advance payments are authorized by the state controller. They include:
 - ♦ Purchase of services for annual maintenance of computers, copiers or other office equipment. Generally, in these instances, full payment is expected annually at the beginning of the term of the agreement.
 - ♦ Grants received by the state from the federal government that are awarded by the state to a subgrantee. Federal grants often require monthly or quarterly advances to subgrantees.
 - ♦ Services provided by entertainers, speakers or for seminars. For entertainers or speakers it is customary to advance a portion of the fee prior to the engagement date. For seminars, payment of the entire fee may be expected upon registering for the seminar.
 - ♦ Annual payments made for software license agreements. Generally, such payments are required at the beginning of the contract term.
3. While the need for an advance payment in an interagency agreement should be infrequent, there may be circumstances when it is warranted. In such an instance the risk of loss of funds to the state is practically non-existent and a process exists to resolve disputes. Therefore, advances on interagency agreements may be made if appropriate.
4. Advance payments may be appropriate in other instances based upon the specific facts of the situation. In all such instances a demonstrated need must be documented to insure the state's interests are adequately protected. If the amount of the advance payment requested is substantial and/or for an extended period of time, financial statements may be requested from the vendor. Generally, an advance payment will not be approved if the contract was made as a result of a competitive solicitation and no mention of an advance payment was in the solicitation.
5. **Except as noted under #2 and #3 above, advance payments required by a state contract must have the prior written approval of the state controller or a delegate authorized by the state controller.**

SECTION 4
CONTRACT DATING POLICY

Despite informal guidance and arrangements in the past, particularly in capital construction contracts relating to the State Controller's Office completion of "made dates" on contracts, agencies should date their contracts on the date the agreement is reached between the agency and the contractor. Agencies should continue to use the term "made date" on their contracts, consistent with the prescribed contract form in Fiscal Rule 3-1. In approved capital construction contracts, agencies may fill in the "made date" or "date executed." Completion of these dates does not change the statutory rule that contracts and other commitment documents are not valid until approved by the state controller or his designee. This statutory approval condition appears at paragraph 1 of the Special Conditions and on approved capital construction contract forms. Consequently, contractors are not contractually required to begin performance and incur costs prior to controller approval.

In capital construction contracts, agencies should use the "made date" or "executed date" for bond references to the contract. Agencies must continue, however, to await controller approval and satisfaction of other statutory requirements, e.g., receipt of acceptable bonds, before issuing the notice to proceed.

